

1-1 By: Carona S.B. No. 471  
1-2 (In the Senate - Filed January 13, 2009; February 17, 2009,  
1-3 read first time and referred to Committee on Finance;  
1-4 April 16, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 10, Nays 0; April 16, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 471 By: Shapiro

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to claims for excess proceeds of a tax sale of real  
1-11 property.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 34.04, Tax Code, is amended by amending  
1-14 Subsections (c), (e), (f), (g), (h), and (i) and adding Subsections  
1-15 (c-1) and (j) to read as follows:

1-16 (c) At the hearing the court shall order that the proceeds  
1-17 be paid according to the following priorities to each party that  
1-18 establishes its claim to the proceeds:

1-19 (1) to the tax sale purchaser if the tax sale has been  
1-20 adjudged to be void and the purchaser has prevailed in an action  
1-21 against the taxing units under Section 34.07(d) by final judgment;

1-22 (2) to a taxing unit for any taxes, penalties, or  
1-23 interest that have become due or delinquent on the subject property  
1-24 subsequent to the date of the judgment or that were omitted from the  
1-25 judgment by accident or mistake;

1-26 (3) to any other lienholder, consensual or otherwise,  
1-27 for the amount due under a lien, in accordance with the priorities  
1-28 established by applicable law;

1-29 (4) to a taxing unit for any unpaid taxes, penalties,  
1-30 interest, or other amounts adjudged due under the judgment that  
1-31 were not satisfied from the proceeds from the tax sale; and

1-32 (5) to each former owner of the property, as the  
1-33 interest of each may appear, provided that the former owner:

1-34 (A) was a defendant in the judgment;

1-35 (B) is related within the third degree by  
1-36 consanguinity or affinity to a former owner that was a defendant in  
1-37 the judgment; or

1-38 (C) acquired by will or intestate succession the  
1-39 interest in the property of a former owner that was a defendant in  
1-40 the judgment.

1-41 (c-1) Except as provided by Subsections (c)(5)(B) and (C), a  
1-42 former owner of the property that acquired an interest in the  
1-43 property after the date of the judgment may not establish a claim to  
1-44 the proceeds. For purposes of this subsection, a former owner of  
1-45 the property is considered to have acquired an interest in the  
1-46 property after the date of the judgment if the deed by which the  
1-47 former owner acquired the interest was recorded in the real  
1-48 property records of the county in which the property is located  
1-49 after the date of the judgment.

1-50 (e) An ~~an~~ order under this section directing that all or  
1-51 part of the excess proceeds be paid to a party is appealable.

1-52 (f) A person may not take an assignment or other transfer of  
1-53 an owner's claim to excess proceeds unless:

1-54 (1) the assignment or transfer is taken on or after the  
1-55 36th day after the date the excess proceeds are deposited in the  
1-56 registry of the court;

1-57 (2) the assignment or transfer is in writing and  
1-58 signed by the assignor or transferor; ~~and~~

1-59 (3) the assignment or transfer is not the result of an  
1-60 in-person or telephone solicitation;

1-61 (4) the assignee or transferee pays the assignor or  
1-62 transferor on the date of the assignment or transfer an amount equal  
1-63 to at least 80 percent of the amount of the assignor's or

transferor's claim to the excess proceeds; and

(5) the assignment or transfer document contains a sworn statement by the assignor or transferor affirming:

(A) that the assignment or transfer was given voluntarily;

(B) the date on which the assignment or transfer was made and that the date was not earlier than the 36th day after the date the excess proceeds were deposited in the registry of the court;

(C) that the assignor or transferor has received the notice from the clerk required by Section 34.03;

(D) the nature and specific amount of consideration given for the assignment or transfer;

(E) the circumstances under which the excess proceeds are in the registry of the court;

(F) the amount of the claim to excess proceeds in the registry of the court;

(G) that the assignor or transferor has made no other assignments or transfers of the assignor's or transferor's claim to the excess proceeds; ~~and~~

(H) that the assignor or transferor knows that the assignor or transferor may retain counsel; and

(I) that the consideration was paid in full on the date of the assignment or transfer and that the consideration paid was an amount equal to at least 80 percent of the amount of the assignor's or transferor's claim to the excess proceeds.

(g) An assignee or transferee who obtains excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for the amount of excess proceeds obtained plus attorney's fees and expenses. An assignee or transferee who attempts to obtain excess proceeds without complying with Subsection (f) is liable to the assignor or transferor for attorney's fees and expenses.

(h) An assignee or transferee who files a petition setting forth a claim to excess proceeds must attach a copy of the assignment or transfer document and produce the original of the assignment or transfer document in court at the hearing on the petition. If the original assignment or transfer document is lost, the assignee or transferee must obtain the presence of the assignor or transferor to testify at the hearing. In addition, the assignee or transferee must produce at the hearing the original of any evidence verifying the payment of the consideration given for the assignment or transfer. If the original of any evidence of the payment is lost or if the payment was in cash, the assignee or transferee must obtain the presence of the assignor or transferor to testify at the hearing.

(i) A fee charged by an attorney to obtain excess proceeds for an owner may not be greater than 25 percent of the amount obtained or \$1,000, whichever is less. A person who is not an attorney may not charge a fee to obtain excess proceeds for an owner.

(j) The amount of the excess proceeds the court may order be paid to an assignee or transferee may not exceed 125 percent of the amount the assignee or transferee paid the assignor or transferor on the date of the assignment or transfer.

SECTION 2. The change in law made by this Act applies to the disposition of excess proceeds of a tax sale paid to the clerk of the court that issued the warrant or order of sale regardless of the date on which the warrant or order of sale was issued, the tax sale was conducted, or the proceeds were paid to the clerk.

SECTION 3. This Act takes effect September 1, 2009.

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